

# Exhibit 5

1 KYLE WEST

2  
3 IMPORTANT NOTICE

4  
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6  
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8 We, the party working with  
9 realtime and rough draft transcripts,  
10 understand that if we choose to use the rough  
11 draft, or the printout, that we are doing so  
12 with the understanding the rough draft is an  
13 uncertified copy.

14 We further agree that the  
15 uncertified rough draft transcript cannot be  
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17 and may not be filed with any court. However,  
18 our own experts, witnesses, co-counsel and  
19 staff may have limited internal use of same  
20 with the understanding that we agree to destroy  
21 our rough draft and/or any computerized form,  
22 if any, and replace it with the final  
23 transcript upon its completion.

24 CASE: Chmura v. Lombardo

25 WITNESS: KYLE WEST

KYLE WEST

DATE: May 14, 2020

REPORTER'S NOTE:

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All such entries will be corrected on the final, certified transcript.

Monna J. Nickeson CRR, CLR, RPR, CCR License  
No. 3233

1 KYLE WEST

2 KYLE WEST

3 Having been first duly sworn, was examined and  
4 testified as follows:

5 DIRECT EXAMINATION

6 BY Mr. MICHALIK:

7 Q. Good evening, Mr. -- I guess good  
8 afternoon, where you're at Mr. West, my name is  
9 Chris Michalik. I'm an attorney for Chmura  
10 Analytics. I'll be taking your deposition  
11 today in the litigation dispute between Rick  
12 Lombardo and Chmura Analytics. I'm going to go  
13 through some ground rules so you understand how  
14 the deposition process works. First have you  
15 ever given a deposition before?

16 A. No.

17 Q. Then just briefly give you some  
18 background rules to keep in mind. First of  
19 all, you as far as you're under oath so this is  
20 like as if you were testifying in a court of  
21 law?

22 A. That's clear, yes.

23 Q. And there's a court reporter who is  
24 going to be taking down what you say and I say.  
25 So it's going to be important so she can get

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what we say down that we don't talk over each other, so if you will let me finish my questions before you answer, and then I'll let you finish your answer before I ask another question, that way she'll be able to get everything we say down, is that clear?

A. Roger that.

Q. And in that same vain, we naturally just in talking sometimes will nod our head up or down or say uh-huh. Or uh-uh, that's difficult for the court reporter to get down particularly in the circumstances we are in today with the virtual deposition, so just answer audibly, okay?

A. Yes.

Q. And if you don't understand a question -- a question that I say, just let me know and I'll rephrase it. If you respond I'm going to assume that you understood the question that I asked?

A. Roger that.

Q. One last thing, I don't think we'll be here overly long today, but this is not a marathon so if you need a break we can take a

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break I may finish a line of questioning before we go into the break, okay?

A. Thank you.

Q. A couple of other background questions, did you review any documents in preparation for your deposition today?

A. I took a look at the declaration that I signed.

Q. Okay.

A. I reviewed the subpoena I believe it was that I received in the mail one or two weeks ago.

Q. Any other documents other than those?

A. No. I was not aware of anything that I was supposed to review.

Q. Okay. And did you talk to anyone in preparation for your deposition today?

A. Aside from Ms. Cooper three to four weeks ago when I prepared the declaration, I apologize if that's not the right term, but the statement that I provided.

Q. Okay. And in your conversations with Ms. Cooper, what did you and she discuss?

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A. So she confirmed my employment with Chmura in terms of the duration, the various positions that I held, and she asked some, I would say, high-level questions about the extent to which I interacted with Richard Lombardo.

Q. And the declaration that you signed, did you draft that declaration?

A. I asked her if she could draft it and send it to me for review, which she did. And I made edits and returned it to her. She sent, I'll say, the edited version back to me, I signed it and returned it to her.

Q. Other than Ms. Cooper, have you spoken with anybody else in preparation for your deposition today?

A. No. My wife.

Q. I'm sorry. Go ahead?

A. My wife.

Q. Okay. And anyone other than your wife and Ms. Coopers, have you spoken to anybody in preparation for your deposition today?

A. No. I wouldn't say in preparation.

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I have a friend here in Spokane who is an attorney.

Q. Okay.

A. That I just asked questions about.

Q. I'm sorry. I interrupted you. Go ahead.

A. I asked my friend some basic questions about what to expect, what precisely a deposition was. Of course the questions that questions that I asked you a few weeks on the phone.

Q. Other than those individuals that you spoke with in preparation for your deposition?

A. No.

Q. Did you speak with Mr. Lombardo in preparation for your deposition?

A. No.

Q. I'm going to ask some background questions about your employment history specifically with Chmura. Do you recall when you became employed with Chmura?

A. I do.

Q. And when was that?



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A. July of 2015.

Q. And do you recall what position you were hired for?

A. I believe the initial title was West Coast Products director. It changed within my first week to applied economics and technology advisor.

Q. Okay. And you said West Coast, I understand that you're on the West Coast today. Have you always been located on the West Coast?

A. No. I grew up in Illinois, and I've been in the State of Washington since 2001. I lived in Richmond from roughly July to -- Richmond, Virginia, that is, from about July of 2015 through Septemberish of 2015.

Q. Okay. And when you were done living in Richmond, that period did you move back to the State of Washington?

A. Correct.

Q. And have you been in, at least during your employment with Chmura, were you in Washington for the rest of that time period?

A. My residence has always been in Washington. I'm not sure the level of detail

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you want. Outside of Spokane, my residence address has always been Washington since 2001, yes.

Q. During your time that you were employed by Chmura, except for the period that you referenced the several month period that you referenced when you were in Richmond, Virginia, was your work -- your primary work location located in the State of Washington?

A. Yes, in terms of where I was physically located, yes.

Q. Yes. Okay. I just want some brief background about your history before you came to work for Chmura in 2015. Did you attend post high school education? Did you go to college?

A. I did.

Q. And where did you go?

A. St. Norbert college.

Q. Do you recall what degree you received?

A. I do.

Q. And what was that?

A. I received a bachelor's degree with

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majors in economics and philosophy.

Q. And did you achieve -- go through any further education? Did you receive a masters or a Ph.D. or any type of post education degree like that?

A. I did.

Q. And what did you receive?

A. I received a masters of health policy and administration.

Q. And where was that from?

A. Washington State University.

Q. Any other degrees that you received?

A. No. I was enrolled for one year in a graduate program in philosophy, ^ unified applied ethics at Gonzaga university which is why I moved here in the first place. And I'm currently enrolled in a master's of business administration program also at Gonzaga.

Q. Before you began working for Chmura, where were you working immediately prior to that?

A. Spokane Area Workforce Development Council.

Q. And what position did you hold?

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A. My title, if that's what you're asking, was business and development manager.

Q. Can you just very briefly describe what your job duties entailed?

A. Yeah. So I had two major pillars of my job description, the development side was to quote-unquote develop resources. We were a 501 C3 or a nonprofit organization. So I led efforts to develop and secure resources to launch workforce programs, college and career readiness type programs at local schools or other nonprofit agencies. It was roughly half my job. The other part of my job was to prepare and deliver reports, make presentations on labor market information for the greater Spokane region which roughly at the time was considered a three county metro area in eastern Washington.

Q. And how long did you --

(Parties speaking simultaneously.)

Q. I'm sorry?

A. Is that a sufficient description?

Q. Absolutely. How long did you hold that position?

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A. October of 2013 through the time when I joined Chmura, so Junish of 2015.

Q. And your job that you had prior to that that job, was it in a similar type of industry?

A. Yes, it was in the nonprofit sector in more education-related, but there were overlaps with workforce and industry engagement.

Q. And who was that -- who were you employed by at that time?

A. Mobious Spokane M O B I U S.

Q. And how long were you employed with Mobious Spokane?

A. I was an employee from -- I don't recall. Nearly two years prior to joining their team, they were a client of mine for maybe three to four months.

Q. Okay. And a client of yours, what was your position before you joined -- who did you work for before you joined Mobious Spokane?

A. I was a sole proprietor.

Q. What kind of business did you operate?

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A. Nonprofit consulting, proposal writing and research.

Q. And that would be writing proposals to get grants and sources of funding, is that what you were doing?

A. Correct.

Q. And is that what you did before you -- soup until the time you joined Mobious Spokane, is that what you were doing, operating your sole proprietorship?

A. No. I mean, that's what I was doing, but I also worked at local restaurants.

Q. Turning now to your time with Chmura, I believe, if I have this down correctly, within roughly the first week or so your title in 2015 was applied economics, and did I hear this -- technology advisor?

A. Correct.

Q. Can you briefly describe what that position entailed?

A. Yes.

Q. Would you do that for the record, please?

A. Sure. So at the time, I'm going to

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1  
2 break this down into roughly the first few  
3 months, the period of time that I was located  
4 in Richmond, and I'll describe what I did when  
5 I returned to Spokane. So the time that I  
6 spent in Richmond in those first few months,  
7 you know, aside from getting oriented and  
8 acclimated to Chmura, I worked on several  
9 proposals, competitive bid, if you will. From  
10 what I recall, they were all to local  
11 governments and nonprofits. I remember one to  
12 goodwill industries, which would be a  
13 nonprofit, and then several to local  
14 governments or similar. I spent a lot of time  
15 working with the sales team because I was a  
16 user, I was a client of Chmura for almost two  
17 years, I believe. And I was a very active user  
18 of their software. Arguably, more importantly,  
19 I was a client of Chmura's main competitor  
20 EMSI. So I spent a lot of time not just with  
21 the sales team but with Chmura as a whole  
22 developing approaching, what we describe as use  
23 cases, so, you know, how does a prospective  
24 client or user, how would they apply mainly  
25 JobsEQ, also other products, labor EQ and

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Career Concourse, but the bulk related to job  
JobsEQ. Are you still there, Chris?

Q. I'm still here. Christine saw this  
last week for whatever reason, we have  
periodically my video will cut out, but I am  
here by audio the entire time.

A. Great. I just don't want to repeat  
myself.

Q. So you were describing --

A. Thank you.

So I spent a lot of time developing  
use cases, helping members of the team to  
understand, I'll say the value of the product  
through the different audiences that we served,  
mainly economic developers, work force  
developers, eventually a little bit of  
education, the education market. And like I  
said I spent a lot of time writing proposals.  
When I returned to Spokane, we -- the other  
thing I was doing quite a bit of probably half  
one month was on onboarding new clients. So a  
member of the sales team would close a deal and  
that new client would receive training. At the  
time we provided one-to-one trainings, one



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1  
2 Chmura staff to one client, which could be four  
3 users, that was rare that all the users would  
4 show up. But all of new clients were either  
5 referred to me or to Greg Chmura who at the  
6 time, you know, I don't recall -- I don't -- I  
7 don't think he was the chief quality officer,  
8 but he was really I think historically, he and  
9 another colleague Allison had been doing all  
10 the training. So I came in and took over, if I  
11 recall correctly, I think Allison stopped doing  
12 trainings if she was ever doing them in the  
13 first place, but I think just given Greg's  
14 bandwidth and his increasing responsibilities,  
15 I probably started to deliver the bulk of those  
16 trainings. So when I returned to Spokane, I  
17 continued to deliver trainings, of course, but  
18 what we did was we, you know, we -- it wasn't a  
19 hard agreement, but between Greg and I, we  
20 tried to arrange things so that I would do the  
21 trainings for clients in the mountain and  
22 Pacific time zone, maybe clients that weren't  
23 available, you know, I guess, at certain hours,  
24 I don't recall, but we also hired another  
25 inside salesperson in the Spokane office. And

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that position was more or less dedicated to prospecting western states, maybe some mountain time zone, I don't recall, but, you know, certainly west of the Mississippi. And Richard -- maybe a gentleman I think his name was James, I forget they had some clients in the western states.

Q. Mr. West, let me just stop right there so the record is clear, when you say Richard, are you referring to Mr. Lombardo?

A. Yes, I'm sorry. Rick.

Q. And you mentioned Jim?

A. Should I call him Mr. Lombardo or Rick?

Q. Either one is fine. I just wanted to make sure we knew who you were referencing when you said Richard and so the record would reflect that.

You also mentioned a gentleman named James, do you know his last name?

A. I believe it was James Donovan or Jim Donovan.

Q. Sorry to interrupt. Go ahead. I just wanted to make sure the record is clear.

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A. So just -- so Jim, if I recall correctly, those two started the inside sales, they were the first two hires when Wesley laid out this, you know, the inside sales team, so Jim was located in Cleveland, alongside Rick. And I think --

Q. And was any -- were they already employed when you became employed or did they become employed after you did?

A. You know, they -- I believe they came on board roughly around February -- I think they were hired at the same time because my impression was the inside sales team was a new thing and it was starting that year, and it was roughly 2015 and I remember this because the first time I met him was at an event with -- where Chris and Leslie were and I believe it was both of them in March, an event that's always in March and I think they were brand-new especially Jim, I remember he was just I think I'd given a presentation with Chris and Jim was just kind of excited and eager to learn and at the time of course I wasn't working for Chmura, but I don't even

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know if he was doing dome most yet I think he was, but he wanted to consume a lot of information and I remember meeting Rick at the time as well in the booth with I think it was just Chris and Leslie at the time.

Q. Okay. And you described your -- you were describing your job duties once you got to Spokane and --

A. Yes.

Q. And with some interruption, were there other job duties you had while you were the applied economics and technology advisor?

A. Yes. So we hired another inside salesperson to focus on the western state, they were co-located with me here in Spokane, that person's name was Dennis Shell. And you know, it was my job to train Dennis on how -- you know, on JobsEQ, so I spent a lot of time on training Dennis. After Dennis, we hired another -- I don't recall the sequence I think we hired a gentleman named Doug Cey, C E Y, the brother, if you're a baseball fan, of Ron -- baseman, Ron Cey, so Doug is his brother. Just for the record, so you spell the last name

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1  
2 right. And then we had a gentleman named Brent  
3 last name Keath, K E A T H, and I don't know  
4 who came after Dennis, but so all of those  
5 individuals I trained on JobsEQ. I worked with  
6 them on their sales script. I made  
7 introductions, even though I wasn't a member,  
8 per se, of the sales team. They didn't report  
9 to me and I don't know that I was their  
10 supervisor, but I certainly worked with them a  
11 lot. We didn't have a training program in  
12 place, I would say, so I spent a lot of time  
13 working with the different especially the new  
14 sales team members and certainly in the Spokane  
15 office, working on their demos and use cases  
16 and things of that nature. And then I also  
17 worked on a few projects, client facing  
18 projects. I traveled to, you know, so these  
19 would be thanks we would submit a proposal for,  
20 you know, through competitive solicitation  
21 process and we'd get awarded the contract so I  
22 would contribute to those projects. Sometimes  
23 I would travel to different client sites for  
24 example Dallas and San Bernardino, California  
25 to engage clients during a project or present

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the findings for a project, Denver, Colorado, actually with a gentleman from your firm, good guy. I forget his name. It was an impact study. Anyway, so I would travel to conferences, I would attend conferences. We, you know, we tried to assign me to conferences that were located in the western states, for example, in California, but I often attended conferences that were in other places as well as -- especially if they were workforce related like the national institute of workforce boards and I attended economic development type conferences a couple of education conferences so, you know, I feel like I certainly, you know, would represent Chmura at various types of events. I think that's -- that first job title, I would say that's kind of the general description.

Q. And you had referenced what you were just saying, and I was trying to get it down I may not have gotten down the exact wording, but particularly with new sales associates or account managers you helped them with their sales pitch, did I hear that correctly?

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A. Correct.

Q. And would each person have an individual pitch that would work for them?

A. I don't know if I would go that far. I recall early on at all -- I believe all PE mail correspondence the account managers were to copy Leslie, and I see Leslie is here so she could corroborate this. And she would I think provide, you know, guidance on the way scripts were, so I don't know -- I wouldn't say that everybody had their voice. Chmura certainly has a pretty rigid style, if you will, style, voice, identity, and I don't think -- I don't think people just kind of threw their own original scripts out there. What I did was I really contributed to the use cases, so a lot of the prospecting, if not all of it, is over the phone, through email and you're making hundreds of calls or emails every day. The script isn't unique. I mean, every time you're really maybe modifying an existing or underlying script. So I think there -- you know, in the moment there was probably some flexibility that something would reflect

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something's voice and of course has unique personalities, but I don't think they had free rein to, you know, bend communication that just reflected their own style and voice.

Q. During this position, the applied economics and technology advisor, how much -- what percent of your time would you say you were spending on interacting with the sales team?

A. At least one-third.

Q. And at some point did you take on a different position at Chmura?

A. I did.

Q. And do you recall when that was roughly?

A. Yeah, so the next position I took on was the managing director of sales roughly February of 2017.

Q. And how did that -- how did your job duties in that position differ from the job duties you had as an applied economics and technology advisor?

A. Well, I mean, they changed quite a bit because I shifted my focus almost entirely



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1  
2 to managing a sales team. And at the time we  
3 had hired three new inside salespeople. I  
4 believe they were all -- I believe they were  
5 all focused on education, so there was Wilson,  
6 Jennifer, and John. So they were hired before  
7 I began, but I recall we had limited bandwidth  
8 internally to manage and train and get this  
9 team up and running. So, you know, it was a  
10 lot of work to get everybody acclimated, I  
11 recall every week we met virtually because we  
12 had Jennifer was in Richmond, Wilson was in  
13 Richmond, John was in Cleveland, I was in  
14 Spokane, so we met multiple times per week to  
15 do trainings, to practice demos, to ask each  
16 other questions, do these things they call rah  
17 Robbins, et cetera, and I also started to  
18 really leverage our customer relationship  
19 management platform called sales force to get a  
20 clearer idea of sales team activity, to compare  
21 the performance and output of different sales  
22 team members, so I would prepare these weekly  
23 dashboards and share them with the leadership  
24 of Chmura, and I think the sales team was  
25 probably on those, you know, correspondence as

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well. So I would meet with the sales team probably two to three times per week and then I believe I would meet and I met with Leslie at least once -- scheduled at least once per week I think on Mondays. You can look in the Outlook records, I'm sure. And then I think we had a monthly meeting with leadership and sales I believe. I'm sure that's in the records, too, but I don't recall. But I certainly focus add lot more of my team and energy on the sales team and getting them acclimated, up and running. I still continued to work on a couple of projects. I remember one in Dallas and then one in California -- or two in St. Cruise and San Bernardino so maybe 75 percent of my time was committed to managing the sales team, 75 to 90 percent, I did say.

Q. And you were referencing getting the sales team up and running. Are those the three individuals that you reference that you hired either right before you started in the position or right after?

A. They were hired before I started in the position. I have no doubt about that

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because it -- there was just a lot of turmoil, I would say, at the time, and a lot of that was related to these new persons not having guidance or support, not knowing what to do. So I spent most of my time with them, but I also spent a tremendous amount of time with as you opportunity virtually as well as Rick.

Q. And who is Austin again, just so record is clear, do you know Austin's last name?

A. That's Austin Steele, S T E E L E, I believe.

Q. And the three individuals that you referenced to were hired shortly before you took over the position or assumed the position, did they have a sales background, do you know?

A. Yes, well, yes, so, yes, Wilson did, John did -- John also had background in maybe a lab industry. I don't know -- I don't -- I don't recall specifically what he did. Jennifer I never actually knew. She was hired I believe through like a temp agency. I'm sure that she was, you know, an experienced inside salesperson. I don't -- I know that the temp

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agencies do their vetting and we would create -- because we did this in Spokane we'd create a very specific profile of the kind of candidate that we wanted, so I am certain that they all had a sales background, yes.

Q. Did it take a lot of effort on your part to get those three individuals operating the way you wanted them to within the Chmura family?

A. Yes.

Q. Roughly, just so we know, is this a lot of effort over a week or two, or are we talking a month time framed to get them how you thought they would?

A. More than a month.

Q. More than a month. Okay. And how long were you in that position, do you recall?

A. Well, I mean, I do recall, you know, roughly September 2017.

Q. So is when you switched to a new position?

A. Yeah, I mean, it's not that clear-cut. I don't know that I had a title change until January of 2018, but I -- my

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duties changed.

Q. Let's address that in two ways, first of all when you did get a title change, whenever that was, what was your new title?

A. Director of workforce development.

Q. And now the second part of that, you referenced your job duties change, how did your job duties change?

A. Well, I believe, and you could of course confirm this, but I believe that Greg Chmura began to kind of take over more of the management of the sales team, and I recall that I started to do some research and develop a plan or blueprints or what would become a web-based training platform for JobsEQ clients, and I don't recall, you know, it wasn't immediate that I stopped, you know, having interactions or, you know, management responsibilities related to the sales, but Greg certainly started to take things over, I would say. And I can't put a date on that.

Q. Sometime roughly Septemberish -- it began Septemberish of '17?

A. September/October.

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Q. Okay. And you mentioned the work you were doing on the web-based JobsEQ, was that a substantial project?

A. Yes.

Q. And were you successful in accomplishing that project?

A. Yes.

Q. And do you recall roughly how long it took you to get that project completed?

A. Yeah, you mean in terms of duration or hours or --

Q. Duration. Calendar duration.

A. Yeah, so I delivered the project by November of 2018.

Q. So it was a year long project?

A. Well, not quite, but looking at a calendar year.

THE COURT REPORTER: You're starting to talk over each.

Q. Was it generally a year long project?

A. Based on the calendar, yes, but I wasn't only working on that project in November and December. Of 2017, I was working on other

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things and I was gone for the month of January, 2018 and I was gone for the month of April 2018. I also worked on a project during, you know, other projects during that time, but if you look at calendar, yes, Novemberish to Novemberish.

Q. And I just want to make sure I understand when you say you were gone in January of 2018, were you gone working on another project or were you taking time off from work? What do you mean you were gone during that period? It wasn't clear to me.

A. Chmura extended me a leave of absence for two months.

Q. And that leave of absence was, was it a move out in January of 2018 and then the other period you said you were gone was also part of the leave of absence?

A. Correct.

Q. And when was the -- just I'm clear, when was the second period of that leave of absence?

A. The month of April, 2018.

Q. And so you also referenced other

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projects you were working on during that time.

Do you recall the types of projects and by that time, I mean from roughly September of 2017 until November of '18, other types of projects that you were working on?

A. Yes. Well, at least one of them was a project for an economic development agency in California, San Bernardino county.

Q. Anything else during this time period that you were focusing your work attention on?

A. Not that I recall. I mean, I'm sure there were other things, but that was the major -- those were the major things that consumed my time.

Q. The JobsEQ web-based project you were doing and some of the other projects that you mentioned that you were interspersed in there; is that correct?

A. Correct. I don't recall, but Career Concourse might have been during that time, that might have been when I was managing the sales team. I don't recall. It was after -- I believe after I was an applied technology and



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whatever -- applied economics and technology advisor.

Q. So I'm clear, you mentioned Career Concourse, what is Career Concourse?

A. It's a career exploration software. Just another project in the suite of products.

Q. And so you had a project to work on Career Concourse or develop it or what was your project with Career Concourse?

A. I was a contributor to its, I guess, revamping or revitalization. So John Chmura provided me with mockups, if you will, examples like screen shots and then Greg and I worked on questionnaire, and I went out to campuses and I would ask students, you know, I would basically get their reaction to the mock -- different screen shots, just part of product development. I was a minor contributor, but that was another product at the time.

Q. Were you involved in the decision to revamp Career Concourse at all?

A. Well, I was part of the conversation, yes. I wouldn't say I was involved in the decision. The decision was

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made, I forget the name at the time, but what is now the SEA Group under the equity partners. I remember a few conversations, one specifically because I was commuting to conference. I was driving down the freeway, a state development conference, and we were having the SEA Group meeting, and one of the major topics in that meeting was Career Concourse and what to do with it.

Q. And do you recall John Chmura wanted Career Concourse to be basically put out to pasture; is that correct?

A. I definitely had that impression, yes.

Q. Others involved, Mr. Lombardo, for example, really thought Career Concourse was necessary to further Chmura's sales goals, correct?

A. I don't recall that. I don't recall Rick being very involved in the education, quote-unquote, vertical. I couldn't say. I don't think -- I really couldn't say. I definitely don't recall him being involved in conversations about Career Concourse. I am

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inclined to think he would rather not deal with Career Concourse.

Q. And at some point, did your job title change again?

A. Yeah. Where did we leave it? It was director of development?

Q. Correct.

A. Yes, it did.

Q. And what did it change to?

A. Director of business development.

Q. And when did that change occur?

A. Again, it's not totally clear but I'm going to say January of 2019, I think it was probably official. January of -- December 2018, January 2019, I'll sure this is in, you know, HR records or something like that, if it's important.

Q. And did your job duties change at that time?

A. They did, yes.

Q. How did your job duties change?

A. I mean, they changed dramatically, you know, through November of 2018, I had been, you know, more than three-quarters of my time

1 KYLE WEST

2 was committed to this training program, so when  
3 I changed positions, kind of the administration  
4 of this program, are you still there, Chris?

5 Q. I'm still here. I just had another  
6 incidence where the video cut off.

7 A. Yeah. So you know, we were  
8 enrolling clients in this program. So there's  
9 some back end kind of admin work besides the  
10 troubleshooting because we used different types  
11 of soft we are we will platform --

12 Q. Let me stop you there. For the  
13 record clarity, when you say "this program" is  
14 this the web-based JobsEQ?

15 A. Correct. It's believe it's called  
16 JobsEQ Fit. So I will refer to it as JobEQ  
17 Fit, F I T.

18 Q. Okay.

19 A. So I developed the content, I loaded  
20 the content onto another vendor's software and  
21 then I would enroll users and I would, you  
22 know, assign them to courses and make sure that  
23 they, you know, they are getting through the  
24 content, make sure they are logging, in we had  
25 a lot of credential password type issues,

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things like that. So at some point, in the fall I think in the fall of 2018, we hired a gentleman, I don't know if it was summer or fall, Wesley Michaels was his name and I forget what his title was, I think he was on Greg's team. I believe he was on data governments. So it was decided that Wesley would take over the administrative aspects of JobsEQ Fit and updating content, things like that. So I probably spent the month of December and part of January not of the entire four to six weeks but a good chunk of it working with Wesley kind of onboarding him, helping him to get acclimated to the content, how to update it, how to create new content, manage the administration, you know, assigning courses all that stuff, right. So when he was, I'll say, up and running, I stopped doing all of that. So you know, my job description really changed quite a bit. I remember in the middle of January, I believe, 2019, I traveled to Richmond. There was a meeting. I remember it was kind of put together hosted by a gentleman named Curtis Monk who I -- I don't know what

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1  
2 his title was, but he was kind of an interim  
3 type, I mean, he managed the sales team, right.  
4 So I think he was brought in to, you know, kind  
5 of on a temporary basis, he was retired, I  
6 believe, but I remember coming to Richmond in  
7 January and I had laid out kind of my plan, my  
8 business development plan, and I had, you know,  
9 I had some feedback from Leslie because I  
10 recall I shared elements of the plan  
11 beforehand, so really in January, after that  
12 meeting in January of 2018, I think you could  
13 say I was just about fully committed to  
14 business development. And what that entailed  
15 was prospecting for partners, vendors, the  
16 partners including vendors and like  
17 professional organizations, member-based  
18 organizations, entities that you know, we have  
19 a potential synergy with, so a professional  
20 association, let's just say of educators.  
21 There may be a lack of awareness amongst  
22 educators about our software. So rather than  
23 try to engage thousands of educators, if we  
24 engaging an association, we can leverage the  
25 association to make our products visible to

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1  
2 their membership. Vendors we had some, you  
3 know, we had some historical correspondence  
4 with a couple of vendors, for example, GIS web  
5 tech would be one, so, you know, their a  
6 complement vendor, they are in the same space  
7 serving a shared audience, but not directly  
8 competitors with us. So vendors like that I  
9 approached several basically as, you know, with  
10 the exception of them, several others that I  
11 prospected to see if they were interested in  
12 possibly working together. We had plans and we  
13 did execute, we had plans for me to travel to  
14 different parts of the country where we had a  
15 high concentration of JobsEQ users. So I  
16 remember, you know, I went to the Carolinas,  
17 Charlotte, North Carolina and the greater -- I  
18 went from Charlotte to Raleigh and visited  
19 clients in between, I visited about ten clients  
20 on that trip over four days. I did something  
21 similar in Dallas with a colleague, and I think  
22 that we had planned on doing three of those  
23 events if I recall correctly. We only did two.  
24 But the planning and the execution, you know,  
25 certainly was part of my job description. I

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was involved in some aspects of the planning for the user conference in 2019. That was in Orlando, working with another colleague, Kim. You know, I think that's roughly about it. I still prepared a few proposals, project proposals or bids. I don't recall -- I was working on one before my last job change to a community in Texas, middle Rio Grande or Grand, I forget. But I really I would say focused more on the -- and I still wrote proposals I wrote a lot of proposals to present at conferences and I continued to travel to a few conferences and I would make presentations on research that folks in Richmond had done but I started to travel less.

Q. Do you know who was managing the sales team at that time?

THE COURT REPORTER: You spoke over each other.

Q. Just so I'm clear on my question I know you mentioned Mr. Monk, but I thought you indicated that he was in a room or some type of position, was Mr. Monk the manager, do you know, of the sales team at that time?



1 KYLE WEST

2 A. For a period, yes. I don't --

3 Q. And that's -- you --

4 A. You have to -- I'm sure there's a  
5 record I don't know if he retired as interim.  
6 That was my impression. I can't say for sure.  
7 I went back from Mr. Monk back to Greg and then  
8 we hired Ely, I forget his last name. I don't  
9 know if Greg was between Ely and Mr. Monk I  
10 think Mr. Monk left abruptly. So I have to  
11 think that Greg took over between Mr. Monk and  
12 Ely.

13 Q. And were you -- was the director of  
14 business development, was that your job title  
15 under the end of your employment with Chmura?

16 A. No.

17 Q. What was your next job position with  
18 Chmura?

19 A. Interim business analyst. I don't  
20 recall.

21 Q. Do you recall roughly when --  
22 your --

23 (Parties speaking simultaneously.)

24 Q. Do you recall roughly when your job  
25 title switched or changed?

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A. Maybe March. The title changed after the duties.

Q. And when you say in March, when you say in March, would that be of 2019 or 2020?

A. 2020.

Q. And how did you -- you referenced that before that, your job duties a changed, how did your job duties change?

A. Well, some of the things that I had been working on were reassigned to other people, you know, prior to the official change, and I started to participate in some aspects of a new job, but I don't believe my title was actually changed.

Q. What were those aspects of the new job that you were referring to?

A. For example, on Monday mornings, there's a standing meeting or a ceremony, we call it, a product communications team, and it's a, you know, largely a product development ceremony that I started to participate in, you know, maybe mid January, I don't recall.

Q. Okay. And at some point did your employment with Chmura end?

1 KYLE WEST

2 A. It did.

3 Q. And do you recall when that was?

4 A. So my resignation date was April  
5 15th.

6 Q. April 15th of 2020? April 15th of  
7 this year?

8 A. Correct.

9 Q. And you said your resignation date,  
10 so it was a voluntary resignation?

11 A. Yes.

12 Q. And are you currently employed?

13 A. Yes.

14 Q. And where are you employed with whom  
15 are you employed?

16 A. Big Brothers Big Sisters of the  
17 Inland Northwest.

18 Q. Of the Inland Northwest?

19 A. Correct.

20 Q. And what is your position with Big  
21 Brothers Big Sisters?

22 A. I'm the chief executive officer.

23 Q. And during your time when you were,  
24 again, discounting or not including the time  
25 that you spent in Richmond, Virginia, other

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than that, you referenced a Spokane office, were you always -- did you change office, did you work from home, what was your work arrangement like in Spokane?

A. We had three different offices.

Q. In different times?

A. Correct.

Q. Was there ever a time you were working from home or was there always a physical office to go into?

A. There was always a physical office to go into.

Q. And I know you've had a bunch of different job titles with different job duties, was there a general normal workday while you were employed with Chmura? In other words, time that you'd go into the office, time that you'd leave or did it change depending on the job title?

A. Yeah, I mean, it definitely changed so. The expectation was that I would be at the office until 5:00 p.m. my time to support virtual chat, so if somebody's using our software and they have a question, everybody,

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you know, everybody else is in the eastern time zone, so I'd be the last person there Monday through Friday. I typically arrived between 7:00 and 8:00 a.m. local time, sometimes a lot earlier. When I started working with the product team this year, they were like, for example, those Monday meetings, product communication team meetings, those are 6:00 a.m. meetings for me, so every Monday, at least for 2020, I started my workday at 6:00 and I would leave at 3:00 p.m., which is not something that, you know, had historically had not been my schedule. But, you know, roughly, say, 7:30 or 8 to 5:00.

Q. Monday through Friday?

A. Correct. And, you know, travel sometimes as needed on weekends -- if we traveled on a weekend, we could take, I think, what's called a comp day, we could take a weekday off to be with family or whatever, run errands.

Q. I wanted to go back through -- you talked about your different positions and talked about your interaction with Mr. Lombardo

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during each of those positions, so if you'll bear with me.

Starting when you were manager, director of sales how regularly were you interacting with Mr. Lombardo?

A. Gosh, between email and phone, maybe 20 times a business day.

Q. Okay. And was that primarily by email, primarily by phone, how would that break down?

A. Primarily by phone. I don't -- you know, I couldn't provide you a reliable breakdown, but I would say primarily by phone.

Q. And when you were interacting with him by phone, would that be, you would use your office phone, how would you communicate or how would you call Mr. Lombardo?

A. Both office and mobile.

Q. And if you can break it down, would it be primarily one or primarily the other or just depended?

A. Well, definitely, you know, during business hours, my office phone. By he got to the office or, you know, after he left the

KYLE WEST

office, my mobile phone generally.

Q. And how often would there be --  
would you have calls with him either before you  
got to the office or after he left the office?

A. Probably four days a week.

Q. What would those calls consist of?  
What would you guys be discussing on those  
calls?

A. Any number of things.

Q. And do you know roughly how long the  
calls would last?

A. Well, when I moved my office, so  
June of 2019, I shortened my commute, and, you  
know, before that, I would talk to Rick  
regularly probably for a bit longer, you know,  
so I would talk to him pretty regularly on my  
way to work.

Q. Mr. West, let me stop you there so  
we can have the record clear. I'm talking  
right now just solely about your time as  
managing director of sales. So that would be  
February of '17 through I think it was roughly  
September or October of '17.

A. Oh, gosh. I don't recall the

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duration of calls, but I certainly talked to him on a regular basis before and after work.

Q. And would you talk to him about social matters, in other words, non-work matters? Did you consider Rick a friend?

A. Yeah, I mean, you know, we're not co-located but we're colleagues and, you know, we see each other once or twice a year but I certainly considered him a friend, yeah, we talked about sports. We talked about eating quite a bit. We talked about stuff that friends talk about.

Q. Again during this roughly six, seven month period in 2017, setting aside the non-work-related calls, how regularly would you speak with Mr. Lombardo by phone when -- after he had left the office?

A. I don't recall, two or three times a week, maybe. I would think you could look at phone records. I don't know, but I know that if he didn't, you know, he would either call me from his mobile or I would call and if he's not at the office I would call his mobile, vice versa, but I couldn't say.



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Q. And do you recall the standard type of thing work-related-wise that you would talk about after basically during his after hours when he'd left the office?

A. Yeah, I mean, he had most of the clients in the western states, so, you know, there are some clients in the western states that I might interact with in the virtual chat especially some that were high maintenance, you know, and I would contact Rick certainly to let him know that I spoke to a certain client or something like that, you know, things of that nature.

Q. Anything else or any other specific types of work calls that you recall contacting him after he left the office? During -- again so we're clear during, this time that you were the managing director of sales.

A. I can't recall specifics, no.

Q. Okay. And now turning to --

A. I can recall calls about clients. I can recall a number of calls. I can't recall specifics, other than client stuff.

Q. Okay. And by client stuff, you

1 KYLE WEST

2 don't recall specific names of clients; is that  
3 correct?

4 A. I mean, I can recall some names of  
5 clients. Do you want those?

6 Q. Who do you recall?

7 A. Well, definitely Soua Vang from San  
8 Bernardino, S O U A, last name Vang, V A N G.  
9 Definitely Ellie Chambers.

10 Q. Are these individuals -- are these  
11 individuals or are they entities?

12 A. Well, I'm giving you specific  
13 individuals employed by entities who were  
14 clients or prospects.

15 Q. Okay.

16 A. What's your question?

17 Q. So for Ms. Vang, what do you recall  
18 talking with Mr. Lombardo about?

19 A. So Ms. Vang might come into chat or  
20 she would actually call my desk phone and she  
21 would have an issue, she doesn't now how to run  
22 a query in one of our analytics. So I would  
23 help her, I'd spent her time on the phone,  
24 maybe I'd set up a virtual screen share to show  
25 her how to do something and I would call Rick

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and tell him what happened so he could obviously it's his client so he's aware and he could record those things in sales force, our relationship management platform.

Q. And are those the type of calls that you were referring to that you recall?

A. Yes, generally.

Q. Do you recall, and I know every call is different, do you recall roughly how long the call you just mentioned roughly how long that call would last?

A. I don't know. I mean, we would, you know, talk about all kinds of other stuff.

Q. And once you switched jobs and job responsibilities to director of workforce development, I understood your testimony at that time you were focused on developing JobEQ Fit and a few other projects.

Did your interaction with Mr. Lombardo decrease when you were in that position?

A. It definitely decreased but it was still consistent.

Q. And would you still speak with him

1 KYLE WEST

2 after he left the office from time to time?

3 A. Yes.

4 Q. Would that be less frequently than  
5 you were speaking with him when you were direct  
6 manager of sales?

7 A. Yes, I think so.

8 Q. And why would you be speaking work  
9 related-wise, I don't need to know any personal  
10 conversations you had, but why would you be  
11 speaking with Mr. Lombardo on a regular basis  
12 in your new position? When I say in your new  
13 position when were director of workforce  
14 development.

15 A. I mean, you've got to understand  
16 that Rick and Austin had more clients than  
17 anyone else. So not only am I reporting to  
18 them about my interactions with their clients  
19 with our clients, but I'm also getting  
20 information from them because I'm working on a  
21 training platform. So, hey, who is a good  
22 resource to talk about supply chain, you know,  
23 how -- what do you hear from your users about  
24 X, Y, Z. How does this sound? I think I was  
25 really kind of on an island working on these

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project, so the sales team was a good resource for me to, you know, maybe get an introduction to a user or to bounce an idea off of. You know, plus, members of the sales team are people that I had worked with on a pretty intense level the year prior, so, you know, they had become my friends, so you could talk about music, you could talk about football. We're remote. So it's a way of breaking up the day. So I mean I continued to talk to Rick, you know, on a regular basis, as well as other members of the sales team.

Q. You mentioned --

A. I continued to work like virtual chat, for example, and had a lot of interactions with clients and users.

Q. And you mentioned Rick, Mr. Lombardo, he was a senior account manager, correct?

A. Yeah, I think he became the senior account manager around I believe that happened when I was managing the sales team, I believe, that him and Austin became the senior account managers.

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Q. And during your time managing the sales team, were you able to observe Mr. Lombardo's performance as an account manager?

A. Yeah, I mean, that's what I did.

Q. Did you consider him to be a good account manager?

A. Well, I thought Mr. Lombardo was the best account manager, yes.

Q. He understood the best way to sell Chmura's products, in your view?

A. Well, I don't know if he understood the best way to Chmura's products, I think that depends on your perspective, but he knew how to -- he knew how to perform at high level. Rick recorded more activities than his peers. So I always call him a freak. The guy was like an auto baton, it was really, when you looked --

Q. Mr. West, I'll let you know that your screen -- your screen has popped off. There you go.

A. So, you know, every week, I would prepare these dashboards, and they were bar charts basically every account manager, the

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Valium of his total activity, whether it's a phone call or an email and Rick bars were consistently well to the right of other members of the sales team. The only person that ever came close to matching his output in terms of activities was Mr. Steele. But in, you know, let's say the 40 weeks that I -- I'm sorry, what is --

Q. I don't know. Let's continue.

A. Okay. So the, you know, in the 40ish weeks that I prepared threes dashboards I recall maybe twice that Austin either matched or surpassed Rick and I suspect that's probably because Rick was, you know, on vacation or basically wasn't in the office performing his usual routine. The other account managers at the time maybe hit half to three-quarters the output as Rick. So he was the high performing, absolutely. I would not say that, you know, he -- you know, it was clear to me that leadership didn't like Rick's style, so I would never say that he came in the best way to sell products that Chmura way.

Q. Did you trust his judgment when it

1 KYLE WEST

2 came to selling?

3 A. Absolutely.

4 Q. And -- I apologize. Hang on. Now  
5 it's my computer. Bear with me for a second.

6 Can you guys hear me?

7 A. Yes.

8 THE COURT REPORTER: The court  
9 reporter can.

10 Q. We have a problem here. It is not  
11 letting me plug back in. Can we take a  
12 five-minute break? Is everybody okay with that  
13 while I try to figure out what is going on.

14 (A recess was taken.)

15 BY Mr. MICHALIK:

16 Q. Before we had the technology  
17 interruption, you were talking about you and I  
18 don't want to put words in your mouth, it was  
19 something to trusting Rick's -- Mr. Lombardo's  
20 judgment with regards to sales.

21 Did you take advantage of his  
22 expertise in that area when you were working on  
23 the JobsEQ Fit?

24 A. Advantage of his expertise in sales?

25 Q. Well, you indicated as I recall you



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were testifying when you had the new position, the director of workforce development, you were still bouncing stuff off of Mr. Lombardo and Mr. Steele. Was that based off of their knowledge and expertise as salespeople that you had observed when you managed them?

A. I'm sorry. I don't understand your question.

Q. So you were -- you testified earlier that when you were director of workforce development, you were still interacting with Mr. Lombardo, correct?

A. Correct.

Q. And some of that interaction was of a personal and friendly nature, correct?

A. Correct.

Q. And you indicated that you were also kind of an on island so you would bounce ideas off of Mr. Lombardo and Mr. Steele, correct?

A. Amongst other people, yes.

Q. And my question was, in bouncing off ideas off of Mr. Steele and Mr. Lombardo, did you decide to bounce ideas off of them because of their expertise or what you observed in

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their ability to complete sales?

A. No.

Q. Why did you bounce ideas off of those two individuals?

A. Well, one, because they were accessible; and two, because I felt they were the closest to the client, so I felt like they were a good resource to bounce ideas off of because they have the most correspondence with our clients.

Q. And were these ideas related to the JobsEQ Fit project that you were working on?

A. At sometimes, yes.

Q. And some of the other projects you were working on during that roughly year period?

A. Yes, I suppose so. I don't-I'm not clear what you mean by their sales expertise. I don't understand how -- I wasn't selling anything, to JobsEQ Fit I would argue is a more technical product, demonstrating how to use something, not trying to sell anything.

Q. As I understand your testimony you would bounce things off those two individuals

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because they had the -- they were closest to the customers, something to that effect. I understood it wasn't their sales expertise. It was their interaction and relationship with the customers; is that correct?

A. Correct. They also tasked with selling enrollments to the program for registrations.

Q. And so I understood your testimony there and I'd asked if you were bouncing ideas off of those individuals related to the work you were doing on JobsEQ and I understood that you said you were, correct?

A. Correct. Amongst other people.

Q. And then the line of questioning that I was asking was were you also doing that bouncing ideas after of those individuals related to other projects you were working on besides JobsEQ?

A. Not that I recall.

Q. Go ahead.

A. I don't understand the inside sales team didn't have a lot of -- they would prefer projects to it, opportunities say, but they

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weren't involved -- they weren't involved with consulting projects; you know, aside from just, you know, referring their client to us because their client had a question or they've got, you know, a bid that they are going to release, they regularly did that, but they didn't have any kind of -- they were never involved in executing a project.

Q. Mr. West, that wasn't my question. I had simply -- you had testified as I understood it and I just want to make sure that I was clear on your testimony, that you would bounce ideas off of Mr. Steele and Mr. Lombardo, did I understand your testimony correctly?

A. Correct, with respect to JobsEQ and perhaps I misunderstood but I thought I heard you ask if I would consult with them on projects outside of JobsEQ.

Q. I did. So -- I didn't use the word consult. I used your word, would you bounce ideas off of those two individuals related to other projects beside JobsEQ Fit?

A. No. Only if it was a referral from

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an account manager.

Q. Now moving to essentially your last  
pox position I know you health a position of  
senior analyst for a short period of time but  
your position as director of business  
development, how regularly would you interact  
with Mr. Lombardo for work purposes ^ in that  
position?

A. I wouldn't say on a daily basis but  
a weekly basis, I would estimate ten to 15  
times per week.

Q. What would you be interact with Mr.  
Lombardo about on those occasions?

A. I don't recall specific details,  
but, you know, generally, we may have clients  
or prospects who are using a product from a  
prospective partner or maybe, you know, they  
were a conference where we wanted to attend --  
one of the things I asked for the account  
managers was to send me, you know, this was  
mainly Austin and Rick, but send me, you no,  
we'd look at a map of users and we'd pin  
locations of accounts, the high concentration  
of users in the state of Florida or in the

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Carolinas or in Texas, so I would rely heavily on the account managers, I'd like, Rick, I'd send him a list of 60 accounts in Texas and ask him, you know, of these accounts, who are the high value accounts, who should I try to prioritize, reaching if we're going to be in the greater Dallas metro or greater Charlotte local region or this May of 2020 I was supposed to be in Florida which was another state where account -- account managers have 50 plus clients so I would have regular interaction, they may have questions about how is the -- how is the fact that JobsEQ data are featured in the other client's product, what does the client get from that product that they also get from JobsEQ or how are they different, how can I describe the relationship with this vendor, you know, sometimes they might ask me to take a call or do a demo or a specialized clients but I couldn't say -- I couldn't get much more specific than that.

Q. Thank you. And during this time, so again while you're director of business development, would you interact with Mr.

1 KYLE WEST

2 Lombardo after he had left for the office for  
3 the day or left the office for the day?

4 A. Sometimes. Not nearly as much, I  
5 did continue to support the virtual chat, but,  
6 you know, I didn't talk to him anywhere as near  
7 as much as I had historically.

8 Q. At some point, did you become aware  
9 that Mr. Lombardo's employment with Chmura had  
10 terminated?

11 A. Yeah, I don't know the official  
12 termination date. It wasn't clear to me if he  
13 was terminated or if he quit -- it wasn't  
14 clear, but I did become aware that he was --  
15 actually, I guess I wasn't sure that he was  
16 terminated. My impression was that he didn't  
17 sign an employment offer or something. I  
18 don't -- at some point I became aware but it  
19 wasn't clear to me I'd say for a number of  
20 weeks.

21 Q. Regardless of how it terminated but  
22 you became aware that his employment with  
23 Chmura ended, correct?

24 A. Correct.

25 Q. And at some point did Mr. Lombardo

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ask you to provide him with a letter of reference?

A. Yes.

Q. And did you understand that the purpose of that letter was to go to prospective employers that he was looking to obtain employment with?

A. Well, I assume that was the case, just that's what we typically use those letters of recommendations for, that was my impression, yes.

Q. And did you provide him with a letter of recommendation -- a reference letter?

A. I did.

Q. And bear with me. We get to see if technology works again. I'm going to hopefully get this to pop up on the screen so bear with me.

Hopefully, do you see a document on the screen now?

A. I see it. The font is very small so I'll try to enlarge it.

Q. I'm going to try to blow it up for you there.



1 KYLE WEST

2 A. I think I can do it. Yep.

3 Q. It's been marked as Kyle West  
4 Exhibit A and just so we have it for the  
5 record, it has a Bates Number at the bottom  
6 Chmura 0151954 and please take a moment and  
7 review this document.

8 A. What -- what is it -- what am I  
9 looking for? Oh, I see it.

10 Q. Yeah, this is -- I'll just ask you  
11 about this and move on to the document I was  
12 going to -- intended to ask you about. Do you  
13 recognize this document?

14 A. Do I recognize it? Yes. It appears  
15 to be an email.

16 Q. Yes, it appears to be an email from  
17 you to Austin Steele dated February 18, 2019.

18 A. Yeah, that's clear.

19 Q. And so do you recognize this  
20 document?

21 THE COURT REPORTER: You spoke over.

22 Q. Do you remember sending this email?

23 A. Well, I mean, I trust you that I  
24 sent this email, yes.

25 Q. Okay.

KYLE WEST

A. I mean it's certainly my signature and I've got a whole bunch of people, you know, the people -- yes, I recognize it. I don't recall writing it. It's more than, you know, a year ago, but...

Q. I'm going to --

A. But.

THE COURT REPORTER: I'm sorry, I didn't understand the answer.

A. I recognize it, I don't think it's not mine.

Q. Just so we're clear, Mr. West, you used a double negative. You don't think it's not yours, meaning you think it was an email that was sent by you?

A. Correct. I don't understand why you're asking me if I recognize it.

Q. Okay.

A. I mean, it's obvious that it's an email that I sent.

Q. Bear with me. I'll try to pull up the document that I wanted. Hang on, guys, it did it again. Bear with me. Our IT is coming. It will just be a moment. Mr. West, I now have

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a document that has been marked as West Exhibit B, I'm doing to try to blow it up so hopefully you can see it.

A. I can expand it.

Q. Can you see that?

A. Yes.

Q. And do you recognize this document?

A. Yes.

Q. And is this the reference letter that you drafted for Mr. Lombardo?

A. It certainly looks like it.

Q. If you scroll down to the bottom, is that your signature at the bottom?

A. Yes.

Q. In drafting this letter, did you -- is everything in that letter true to the best of your knowledge?

A. Yes.

Q. From time to time, did you engage in text messages with Mr. Lombardo?

A. Yes.

Q. Again so the record is clear, your letter -- moving to the next?

Mr. MICHALIK: Let's take a

1 KYLE WEST

2 five-minute break while I get the technical  
3 person in here so I can get the document on  
4 the screen.

5 (A recess was taken.)

6 Q. Mr. West, you should now have on  
7 your screen a document that has been marked as  
8 West Exhibit C. And it's a five-page document:  
9 Are you able to see that?

10 A. Yes.

11 Q. And if you take a moment and look  
12 through the pages, tell me if you recognize  
13 this document.

14 A. Well, it looks like a text message  
15 and I have one page.

16 Q. Okay.

17 A. Can you point anything ought  
18 specific.

19 Q. I'm trying to get it -- okay. So  
20 here's the second page.

21 A. Yeah.

22 Q. And --

23 A. Go ahead.

24 Q. And do you recall texting with Mr.  
25 Lombardo on Saturday, November 23rd and Sunday,

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November 24th?

A. I don't recall, but if that's what this is, clearly, it happened.

Q. And if you will look at the second page, the page we're on now, you see at the top it has TO.Kylewest@gmail.com, it says, no, I have to type it at work. Midafternoon probably unless our 9:00 gets canceled and then I can type it at that time and have it to you by noon. Is that the reference correct? Is that the reference letter that you just reviewed?

A. That would make sense to me, yes.

Q. If you scroll down on this page, there's a text from Mr. Lombardo that says, other letter went out. Do you know what letter he's referring to?

A. Other letter went out. I do not, and I don't know who Butch is.

Q. Okay. And then from your tag -- I'm going to call it your tag line, the To.Kylewest@gmail.com says, "I'm on the phone again. And then there's a response from that that says check your email. Do you recall receiving an email from Mr. Lombardo at this

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time?

A. No.

Q. And then we'll go to the next page, and this is text stream dated Friday, January 31, 2020, and there is got our court date in blue and then under your identifier, it's oh, wow, does that mean Allison and the others will get deposed, do you know texting with Mr. Lombardo specifically texting with Mr. Lombardo at that time?

A. I don't recall, but, again, clearly it happened.

Q. Going to Page 4, it goes down to a date of Friday, February 7, 2020, and there's the text that says how did it go? And a response from you, just dropped the mic, check your email?

A. Yes.

Q. Do you recall that exchange with Mr. Lombardo?

A. Yes.

Q. Before we get to that, at the top, there we go, at the top, this is back to the January 31st date or 30th date where it was

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referencing a text about we got our court date, and you say, I could call you back in a few minutes. And the text in blue says just call me in a few, do you recall having a conversation with Mr. Lombardo on the date that he announced he got his court date?

A. No.

Q. Mr. West, I now have a 10-page document in front of you that's been marked as West Exhibit D. Do you recognize -- I'll let you look through this document. Do you recognize this document, the first page of this document?

A. Well, again, it appears to be a text message.

Q. And we're on -- I'm sorry. So do you recall texting with Mr. Lombardo on October 2nd of 2019?

A. No.

Q. Do you recall him informing you that he believed Wilson and he were not going to be treated well, I don't need to say the word that's on there, related to a restructuring in the sales team?

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A. Yes.

Q. And before he informed you of that were you aware that Chmura was considering restructuring the salespeople?

A. Yeah, in some ways, you know, again, it was vague. Roughly summer of 2019, maybe even spring of 2019, there were kind of I'll say conversations about updating the different sales territories. I don't recall if we'd already hired new staff but certainly there were plans I believe to hire additional staff, but I don't recall all the specifics, they were definitely conversations around that, yes.

Q. Were you involved in the decisions on what to do with the sales team?

A. No.

Q. Okay. And did Mr. Lombardo let it be known to you that he was unhappy with the potential changes?

A. I don't think it was clear -- I don't recollect, you know, obviously what does he say we're going to get fucked, so I would interpret that as being unhappy. That's pretty clear.



KYLE WEST

Q. And I'm just going to ask, make sure you recognize or that the subsequent pages are texts between you and Mr. Lombardo. Do you recognize the second page?

A. Page 67?

Q. Yes.

A. With the dogs.

Q. Yes, Kyle West WTF and then Butch, that's what we post online?

A. Yes.

Q. And same thing, and maybe if -- do you recognize the third page of these documents as being texts between you and Mr. Lombardo?

A. I don't.

Q. Okay. And you recall Mr. Lombardo texting you, I'm now on Page 4, that at the bottom it has Page 72, Lombardo 000483, texting you when they shut off -- they being Chmura shut off his JobsEQ email and sales force?

A. Yes, I do.

Q. Same question with number -- the next page, do you recognize this page?

A. Page 73?

Q. Yes, sir.

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2 A. Sorry. I'm scrolling. Yes.

3 Q. And do you have the ability to  
4 scroll to the next page or do I need to do that  
5 for you?

6 A. I can't get past Page 73.

7 Q. All right. We'll just do it this  
8 way. Same question, I just want to know if  
9 this is more of the same text thread between  
10 you and Mr. Lombardo.

11 A. Okay.

12 Q. Do you recognize this being  
13 additional text thread between you and Mr.  
14 Lombardo?

15 A. Well, it sure looks like it. I  
16 mean, I don't believe that you fabricated this.

17 Q. And so the record is clear I'm going  
18 to ask you the same question with regard to  
19 Page 7.

20 A. What's the question?

21 Q. Is this part of a -- more of a text  
22 thread between you and Mr. Lombardo?

23 A. It looks like it, yes.

24 Q. Again same question with Page 8,  
25 just so we have a clear record?

1 KYLE WEST

2 A. It looks like it, yes.

3 Q. And Page 9?

4 A. Yes.

5 Q. And then the last page, Page 10?

6 A. Yes.

7 Q. Now, earlier in your testimony you  
8 referenced a declaration that you gave to Ms.  
9 Cooper? Do you recall your testimony regarding  
10 a declaration?

11 A. Yes. I can't hear you, Chris.

12 Q. I'm bringing it up on the screen.  
13 Can you see the document that's now been marked  
14 as west Exhibit E?

15 A. Yes.

16 Q. And take -- I'm going to turn to  
17 turn to Page -- we've gone through page 2 and  
18 we're now on Page 3, and you see paragraph 17?

19 A. Yes.

20 Q. And it says, I never had a  
21 discussion with Mr. Lombardo regarding limiting  
22 his work hours or not exceeding a certain  
23 number of hours. Mr. Lombardo was permitted to  
24 work as many hours as he wanted."

25 A. Yes.

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Q. Did you ever have any conversations with Mr. Lombardo while he was at Chmura employee about overtime or his receiving overtime?

A. Not that I recall. There were conversations about overtime, but I don't recall having one with Rick.

Q. Okay. And when you say there were conversations about overtime, there were conversations -- what conversations do you recall about overtime?

A. We had an inside salesperson her name was Jennifer Ludvik. L U D V I K, I believe, who was at least my understanding was she was terminated for working overtime and billing us, you know, for time and a half or double time, I don't recall, but we -- you know, it was an issue at the time and then it came up, I believe, in the wake of Rick's departure or maybe before Rick's departure, limiting the hours of sales team members not to exceed 40 hours and I think they were prohibited from traveling, you know, so I don't know if that was the summer of 2019 or the fall

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of, again, I don't know if it was before or after Rick left, but...

Q. Okay. And were you involved in the decision regarding the individual you just referenced. -- I didn't catch her last name.

A. No, not at all. I don't recall if I had already become the manager of sales, but that was a Richmond issue. It was handled in Richmond from what I recall.

Q. You had no involvement with that matter?

A. Not the decision to -- I had very limited information. I just remember that there was an issue with the contract from the temp agency and us not knowing that she was going to earn overtime. I'm not -- you know, I'm not certain of the specifics.

Q. Okay. And with regard to other salespeople, you don't recall if the company's decision on how to portion out hours for those salespeople, if that was when Rick was employed or after he left, when I say Rick, I mean Mr. Lombardo?

A. I don't recall and even know what

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2 was ultimately decided. I'm not sure.

3 Q. I apologize. You kind of went very  
4 quiet. I couldn't hear very good the last  
5 better. What did you say?

6 A. I don't know -- I don't recall what  
7 was ultimately decided.

8 Q. Okay.

9 A. Can I turn Leslie's screen off?

10 Q. I think it's just up there. So I'm  
11 going to go through and introduce a few more  
12 exhibits and just see if you recognize them.  
13 So bear with me. You should have a document on  
14 your screen that's been marked as West Exhibit  
15 F. Do you see that document, Mr. West?

16 A. Yes.

17 Q. And I know we have to go page by  
18 page, but do you recognize the first page?

19 A. Well, I can't seem to expand this  
20 page to zoom in, like I could the others, so,  
21 but it does look like an email.

22 Q. Can you see it now? Did it expand  
23 for you?

24 A. It did not.

25 Q. Still no luck in the expanding?

KYLE WEST

A. No, I'm fine if you can read.

Q. From Kyle West at

Kyle.west@chmura.eccon.com Monday June 5, 2017  
to Greg Chmura, Leslie Peterson, Chris Chmura,  
et cetera --

A. You don't have to read, I can see  
the names I can't really read the sentences.

Q. It says, Rick, please see the string  
below for some background. If you feel there's  
an appetite for this, then would you please  
reach out to the Omaha Chamber and the  
Charlotte Regional Partnership to discover if  
they would be willing to provide us with some  
feedback developing out widget solution. If so  
then you can just coordinate with Greg and  
John, but please keep me in the loop. Thanks,  
Kyle.

Do you recall a situation working  
with widgets and having Mr. Lombardo reach out  
to the Omaha chamber and the Charlotte regional  
partnership?

A. I do recall asking Mr. Lombardo to  
reach out to different clients. I don't recall  
this specific instance.

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Q. You have to reason to dispute that this is an email that was sent by you?

A. No.

Q. We have one last one, so bear with me. You should now have in front of you a document, an email that's been marked as West Exhibit G?

A. Yeah, I mean, again, I can see it. It's very small, so if you wouldn't mind reading the sentence, that would be helpful.

Q. Sure. You can see the people it's from Rick Lombardo to you, subject is re: Follow-up and it just says good morning, sir, I was just trying to send you the conferences that we can add to our list and make the decision on which one to attend I would prefer Texas but it is three days after the career source conference in Florida, and that was a response to your email dated February 24, 2017 to Rick saying good morning to you, too, Rick. I imagine Texas is a better event for us than the Ohio one, question mark, or would you recommend we send reps to both, question mark?

Do you recall making a decision on



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where to send what conferences to send reps to,  
whether Texas or Ohio?

A. Okay. I'm sure we wound up in Texas  
but we would convene as a committee, I think it  
was called a conference planning committee.  
So, you know, I don't recall the specific  
decision, but, yes, I asked these sorts of  
questions of the account managers, you know, on  
maybe twice a year.

Q. Okay. And any reason-

A. I've been on -- I'm sorry, I  
participated in the conference planning  
committee for probably at least three years, I  
believe.

Q. No reason to dispute that this is an  
email chain between you and Mr. Lombardo?

A. No.

Q. Okay.

Mr. MICHALIK: I think I have no  
further questions subject to rebuttal.

THE WITNESS: Thanks.

MS. COOPER: I have a few questions,  
this is Christine Cooper.

Q. And just picking up where we left

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off here can you describe what the conference planning committee is or was?

A. Sure. So you know, I can recall back to Laura Lee Savage who I believe was the director of operations, I think she left in 2017, but I don't recollect precisely. I bring Laura Lee up because I remember as far as back I can remember convening this group. It was Leslie, myself, Laura Lee who eventually became Sharon Simmons. I don't recall if Sharon was always part of committee, but definitely the core group of Leslie, myself and then recently Avery Simmons, no relation to Sharon. She came onboard sometime last year and kind of joined this committee and roughly we might meet in the fall and then maybe in the spring roughly and there's a Google Doc going back at least four years I think it even goes back further than that. And it's basically an inventory of all conferences that we were aware of, conferences that we either attended or chose not to attend and, you know, there's some notes like the size of the event, the audience that attend the he tend, maybe it's real estate or workforce or

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economic development. Who is the PO C for the event, is there an opportunity to submit a proposal to present, et cetera, et cetera.

It's a pretty robust document. So we would huddle through a virtual for me a virtual meeting and review upcoming conferences, evaluate, you know, kind of pros and cons of different conferences and decide what to attend. And update the document, if we submitted a proposal to submit at a conference and it was accepted, great. You know, it's more likely that we may attend that or it will affect who we send because we have to send somebody who can present. If it's not accepted, maybe, you know, we'll send somebody else. So that was kind of the platform for discussion, I would say, is that that Google Doc, and I think -- I don't recall a specific -- we didn't meet every month, we didn't meet once a quarter but we met twice a year I would say and we would revisit it based on maybe budgetary constraints or new conferences that we became aware of, so pretty common for an account manager to send us, you

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1  
2 know, an email maybe forward an email from one  
3 of their prospects or client inviting us to a  
4 different conference generally in their region  
5 or maybe it's for an association that the  
6 client belongs to or maybe they think this  
7 would be a good association that's been hard  
8 for us to target they have 10,000 educators  
9 that belong, et cetera, it, so we would discuss  
10 all those things and take it into consideration  
11 to, you know, make decisions around what to  
12 attend, who to send, how long to stay there.

13 Q. Was Mr. Lombardo on that committee  
14 at any point in time?

15 A. No, no.

16 Q. Would he ever decide what convention  
17 or conference to attend?

18 A. I mean, not that I was part of. I  
19 think he was certainly, you know, the sales  
20 team is definitely was, again, a resource to  
21 make us aware of certain opportunities or  
22 conferences, but I don't -- he didn't have  
23 decision-making, I don't know, authority. You  
24 know, you couldn't just like book a conference  
25 or definitely it went to the conference

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committee or maybe directly to Leslie or something.

Q. I want to ask you about a couple of I'm going to say products but that's probably the right word so you can correct my language. There's been some testimony in the deposition so far about Mr. Lombardo's involvement with several different products. And I'm going to start with one that I think was brought up today which is Career Concourse. Do you know if Mr. Lombardo had any involvement in developing Career Concourse?

A. Not to my knowledge. I was -- I contributed to, you know, certain aspects of that and I never -- I don't recall interacting with Rick. It was mainly with John and -- John Chmura and Greg Chmura.

Q. What about an, tell me if this is not a product but a program or product called Clippy?

A. So Clippy tool is a feature, well, I should say a -- it's a potential feature, it's on what we call the roadmap, so this is a, you know, a large inventory of features to be

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1  
2 developed and it got, you know -- my audio  
3 is -- so Clippy tool is, you know, one amongst  
4 probably more than 150 product features that  
5 are in our roadmap and what the roadmap is  
6 doing, it's based on feedback from clients and  
7 internal staff including the sales team, chat  
8 team members, so if I'm monitoring chat and I  
9 get a request from a client, like, hey, why  
10 can't I get historical occupation wages, for  
11 example, then I can tag that chat, because it's  
12 a product request, right, so I can tag that,  
13 export it and it will go to the product  
14 development team, or it will go the a few  
15 different people I think it goes to Greg who  
16 technically might not be in technical  
17 involvement, anyway. Clippy tool is a, you  
18 know, it's a potential feature and so my  
19 knowledge -- it's definitely still on the  
20 roadmap and it's been, gosh, there for at least  
21 three years, maybe. We developed something  
22 called a quick link that was a kind of a  
23 holdover to Clippy tool. That's probably way  
24 too much information, but, yes, I'm aware of  
25 Clippy tool it's a feature of job JobsEQ

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potential feature.

Q. Do you know --

THE COURT REPORTER: Can.

Q. Do you know how Clippy, ended up on the roadmap?

A. I've got a good idea. I mean, it's a -- it's what we would call a competitive gap so it's a feature that we know our main competitor EMSI in this case has in their -- in whatever their platform is called. A competitor to JobsEQ analyst, at least that's what it was called when I used I so it's been a competitive gap since I used the products side by side more than five years ago. So, you know, I mean, there's any number of -- if I look at the product roadmap, so we have a software called Prod Pad and it's relatively new in the past few months when I joined the product development team. We had this inventory of product features that we aimed to develop and there's a column for feedback, so you've got the number of persons, whether internal or external, who have requested that feature or at least we have interpreted their

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request and this could be by email, it could be by phone, it could be by chat. We have interpreted their request as a request for historic wages or Clippy. So I do know, I mean, I clearly recall that Clippy had, you know, it's a -- it's one of those product features with more requests in terms of the volume of feedback than the vast majority. I would make a very educated guess that it's in the top 20 of more than 150 features on the roadmap in terms of volume of feedback.

Q. Do you know what Mr. Lombardo's involvement if any was in getting Clippy on the roadmap?

A. I don't know, but I think -- I would assume that he, you know, shared amongst the X number of feedbacks, he, you know, he is represented in that pool of feedback given all the clients that he served basically, I'm sure of that.

Q. Would he have any decision making authority in terms of developing or producing Clippy?

A. Not to my knowledge, absolutely not.



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Q. With respect to the roadmap, did Mr. Lombardo have any input into prioritizing what's at the top of that list?

A. I mean, based on my understanding of how things get prioritized, no, aside from contributing to feedback and informing what we call or what we refer to as the use case, so if he, you know, or somebody has a prospect or a client who says, hey, we really like your tool, but what we really need is wages by ethnicity or something like that, so, you know, Rick would -- it would be incumbent on Rick or the account manager whoever it may be to get more information to answer the question of, well, why do they want this, why does it serve economic developers, et cetera, it, et cetera so I think you could say that by contributing to the content that is recorded in our, you know, literally archived in prod pad on product management software, he has influenced the -- what features make the roadmap, but there is an actual process, well, kind of, we have a process for assigning scores based on the impact, the level of effort and the value of a

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feature. So it's a very specific process. And it's a group.

Q. So, I'm sorry. Go ahead.

A. There's a group that assigns values, I shouldn't say values, just, I don't want to create confusion, but there's a team that assigns values linked to the level of effort required and the value of the feature, so that group makes decisions, however, the roadmap gets presented, I believe, on a quarterly basis to the SEA Group, and the priorities that come through the SEA Group don't always align to the priorities assigned by the product development team. Does that make sense?

Q. Yes. Was Mr. Lombardo ever part of the group that assigns values?

A. I don't believe so, but you'd have -- you know, well, I -- I don't believe so, not when I was involved.

Q. Was Mr. Lombardo ever part of the SEA Group?

A. Definitely not.

Q. Can you describe -- well, first of all, the term leadership has been used quite a

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bit throughout this matter, can you describe for me who constitutes leadership?

A. Well, from my perspective, I think of leadership as the SEA Group. I forget what the acronym stands for, that's who I think of as Chmura's leadership. I don't know, you know, behind the scenes whether they vote or how many -- how votes are weighted. I have no idea. But that is certainly my impression is that that's where decisions get made and I believe that Chris has the most influence. My impression is that even if a majority of the SEA Group did not agree with something or want to pursue something, my impression is that Chris could override that, but I am not certain.

Q. And by Chris, you're referring to Dr. Chris Chmura; is that correct?

A. Chris Chmura, yes, yes.

Q. Were you on SEA Group or part of SEA Group?

A. No.

Q. Bear with me for one second. As far as leadership management style or C group's

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management style, can you describe that?

A. Off the cuff, no, I can't, inconsistency, intimidating; threatening, insecure. I mean, I could go on with -- I'd be happy to prepare something in writing, but I think I would just be rambling, I could go on with easily 15 or 20 descriptors.

MS. COOPER: I don't have any more questions for you, Mr. West. I appreciate your time.

BY Mr. MICHALIK:

Q. West, I have just a real quick follow-up.

A. Okay.

Q. Can everybody hear me okay. I was getting some feedback.

A. Okay.

Q. You were talking about this group or team that assigns values for the roadmap, were you ever on that team?

A. Yes.

Q. And what period of time were you on that team?

A. Roughly mid February to my

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resignation early April.

Q. So just so we're clear, so mid February of 2020, you submitted your resignation? ^

A. Correct, when I became the senior business analyst.

Q. And I'm taking it from what you were just saying in response to opposing counsel's questions, would it be fair to say you're not a fan of -- were not a fan of Chmura analytics at the time you resigned your employment?

A. I don't think that would be fair.

Q. Were you unhappy with Chmura's leadership at that time?

A. I do feel like leadership failed, yes, but Chmura leadership is, I would characterize it as dichotomis ^ . So I really enjoyed work working with certain members of leadership and I really did not enjoy working with others. So I experienced a string of specific incidents that led me to a tipping point and when I reported that to Chris, the CEO, she told me to move on, and I didn't appreciate that, but I wouldn't say -- I

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wouldn't say it made me unhappy, you know, the style is such over time that I wasn't surprised by her response, but I definitely felt like it was time for me to move on which I felt for, you know, probably more than a year, but I think to their credit, maybe they sensed that maybe they really wanted to keep me around, but as you can tell I rotated jobs quite a bit, but, you know, I had some -- I think at the latest transition occurred a few months beforehand, I would still be employed if, but, you know, the string of incidents that I experienced just kind of hardened my resolve to move on and my mind was made up, so I wouldn't say I was unhappy. I think I was pretty well over it by the time I resigned, but I don't feel like I was unhappy. I think if you asked me colleagues if I was unhappy, I don't think anybody would, any honest person would say they detected that in my mood or persona.

Mr. MICHALIK: No further questions.